UNITED
NATIONS

A

General Assembly

PROVISIONAL

A/46/PV.44
12 November 1991

ENGLISH

Forty-sixth session

GENERAL ASSEMBLY

PROVISIONAL VERBATIM RECORD OF THE 44th MEETING

Held at Headquarters, New York,
on Friday, 8 November 1991, at 10 a.m.

President: Mr. SHIHABI (Saudi Arabia)

- Disaster in the Philippines
- Report of the Secretary-General on the work of the Organization [10]
- Report of the International Court of Justice [13]
- Programme of work

This record contains the original text of speeches delivered in English and interpretations of speeches in the other languages. The final text will be printed in the Official Records of the General Assembly.

Corrections should be submitted to original speeches only. They should be sent under the signature of a member of the delegation concerned, within one week, to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

91-61718 7276V (E)

The meeting was called to order at 10.05 a.m.

DISASTER IN THE PHILIPPINES

The PRESIDENT (interpretation from Arabic): I should like, on behalf of the General Assembly, to express to the Government and people of the Philippines our deepest sympathy on the tragic loss of life and material damage caused by the recent floods there.

I should also like to express the hope that the international community will show its solidarity and respond promptly and generously to any request for assistance.

Mr. PADILLA (Philippines): On behalf of the Government and people of the Philippines, I should like to thank the General Assembly for the sentiments you have just expressed, Mr. President.

AGENDA ITEM 10

REPORT OF THE SECRETARY-GENERAL ON THE WORK OF THE ORGANIZATION (A/46/1)

The PRESIDENT (interpretation from Arabic): It is customary for the Assembly to take note of the annual report of the Secretary-General.

If I hear no objection, may I take it that the Assembly wishes to take note of the report of the Secretary-General in document A/46/1?

It was so decided.

The PRESIDENT (interpretation from Arabic): We have thus concluded our consideration of agenda item 10.

AGENDA ITEM 13

REPORT OF THE INTERNATIONAL COURT OF JUSTICE (A/46/4)

The PRESIDENT: The report of the International Court of Justice (A/46/4) covers the period 1 August 1990 to 31 July 1991.

May I take it that the General Assembly takes note of the report of the International Court of Justice?

It was so decided.

The PRESIDENT: I call on Sir Robert Yewdall Jennings, President of the International Court of Justice.

Sir Robert JENNINGS (President of the International Court of Justice): I am most grateful for the permission that has been given to me, as President of the International Court of Justice, to address the General Assembly. I thought it might be useful at this session, when there is the feel of a new beginning, when the international scene is changing with bewildering rapidity, to take a new look at the role of the International Court of Justice.

After decades of underuse, the Court now has a full docket of important cases, with Parties ranging from Scandinavia to Australia and from Central American to the Gulf. Perhaps I might give the Assembly a brief rundown of the present list of cases, in order to give some idea of the topics and of the Parties involved.

First, the Court will give its Judgment early next week in a case between Guinea-Bissau and Senegal on whether an arbitration award of 1989, concerning their dispute over the maritime boundary, is or is not binding.

Second, beginning next week will be the oral proceedings in a case brought by Nauru against Australia regarding the mining of Nauru's phosphate resources during the period of trusteeship.

(Sir Robert Jennings, President, International Court of Justice)

Third, progressing at the same time - for gone are the days of taking one case at a time - is the case between El Salvador and Honduras, with Nicaragua as intervener, brought before a Chamber of the Court, concerning six portions of the land frontier, the legal position of the waters of the Gulf of Fonseca, and questions about islands in the Gulf. This dispute, going back a very long time indeed, has at least once led to armed hostilities.

Fourth, a new case introduced by Guinea-Bissau against Senegal seeks to bring the substance of the question of their maritime boundary before the Court.

Fifth, there is the case brought by Finland against Denmark complaining that a suspension bridge that Denmark proposes to build over the Great Belt will, if completed, be in breach of rights of passage for drilling rigs and drilling ships that pass through those waters from Finland to the North Sea. The Court has already adjudged an application for interim measures of protection in this case and will probably be holding hearings on the substance of the matter next year.

Sixth, there is a case between Denmark and Norway over the delimitation of the maritime boundary between Greenland and Jan Mayen in which a very large area of sea and shelf is involved.

Seventh, the Islamic Republic of Iran has brought a case against the United States concerning the shooting down of Iranian Flight 655 in the Gulf on 3 July 1988.

Eighth, the well-known case of territorial dispute between the Libyan Arab Jamahiriya and Chad, which has at times been the cause of armed hostilities, now comes before the Court as a result of action by both Parties.

(Sir Robert Jennings, President, International Court of Justice)

Ninth, Portugal has recently brought a case against Australia concerning the continental shelf off East Timor, Portugal complaining of Australian dealings with Indonesia over that maritime area.

Tenth, there is an application by Qatar against Bahrain regarding the maritime boundary in the Gulf.

Eleventh, the case concerning border and transborder armed actions brought by Nicaragua against Honduras remains on the list but proceedings have been suspended at the request of both Parties.

All eleven of these cases are brought under the Court's contentious jurisdiction. But it would be wrong to assume that the influence of the Court is necessarily limited to the cases appearing on the lists and eventually in the reports; there are also cases that are settled diplomatically when the possibility of resort to the Court as an option is brought up in negotiation.

I should mention that the use of the contentious jurisdiction is now much assisted by the Trust Fund for helping to meet the expenses of poorer litigant governments. This important Fund was created on the initiative of our present Secretary-General, and all the Members of the Court are most grateful for this assistance.

There are no advisory opinion cases before the Court at the moment, but there have been some fairly recently, and I would like to mention that recently, for the first time, the Economic and Social Council exercised its power to ask the Court for an advisory opinion.

(Sir Robert Jennings, President, International Court of Justice)

This docket of cases is an impressive list compared with, I think, that of any other time in the history of the World Court. Even so, one is very much aware that a list of 11 cases might not immediately strike a judge of a typical domestic court as representing an over-busy court.

On this point, I should like to mention that the International Court and domestic courts are not in a comparable situation. First, there are the dimensions of some of the cases we have to hear and decide. The Honduras-El Salvador case is one in which there is a table full of volumes of documents and volumes of arguments and pleadings, which is in itself a very large task to negotiate. Secondly, in most of the cases - in fact, 10 out of the 11 I have mentioned - the Court does sit as a full court of 15 judges, or if there are ad hoc judges, even 16 or 17, who must, every one of them, be allowed to take a full part in the preparation of notes, in the deliberations and in the formal readings of the draft judgment in the two languages of the Court. They must be allowed to do this because they are elected, in accordance with the Statute, to represent the main forms of civilization and the principal legal systems of the world. To fulfil that requirement, the Court must operate as a college and it takes a good deal of time, as one can imagine, for 15, 16 or 17 judges to take a full part in almost every stage of the decision of a case. Finally, I might perhaps be allowed to mention that every judge does his own research, in every case, into the now vast and complex body of international law materials, for none of us is provided with research assistants, and even secretarial assistance has to be shared. I mention these matters because the Court does feel very busy, and from what happened in the past I think we may say that it is gratifyingly busy by any standard.

(Sir Robert Jennings, President, International Court of Justice)

Glancing at this list of cases, we can say one thing with assurance: this is indeed now a world court, exhibiting in its daily work that quality of universality which is also a feature of this General Assembly. I think there is every reason to believe that this new busyness of the Hague Court, which has been developing now for some time, is set to continue. A reason for that belief is that there is perhaps now a greater understanding among Governments of the role that an international court can and should play in their relations with one another. An important and welcome symptom of that change is the steady growth of the number of declarations accepting a measure of compulsory jurisdiction under Article 36.2 of the Court's Statute, the so-called optional clause. This development is also matched by the withdrawal of many reservations against jurisdiction clauses in treaties, which is also an important and welcome tendency, and by the augmentation of the Court's general jurisdiction.

But it is not my intention just to report to the Assembly on the relative health of the World Court at the present time, but rather to try to look to the future and see the direction in which the Court perhaps ought to go during this Decade of International Law, whose programme also includes the strengthening of the role of the International Court of Justice. A major problem for the United Nations as a whole must always be the relationship between, on the one hand, political decision and action on the diplomatic plane and, on the other, adjudication on the basis of law by the Hague Court in its role as the principal judicial organ of the United Nations. What part, for instance, can and should the Court now play in that important new role of the United Nations which has been called preventive diplomacy? These questions raise some other large questions and I can only attempt here to

(Sir Robert Jennings, President, International Court of Justice)

sketch the future role of the Court in this respect as I see it in this rapidly changing and evolving United Nations.

The relatively restricted role played by the Court in the past stemmed, at least in part, from seeing the role and function of the Court as being a quite separate one to be performed over there in the Peace Palace at the Hague. I suppose people in general thought, and perhaps still think, of the Court as a quite separate and self-sufficient means of dealing with any dispute and thus, since it was simplistically assumed that wars and threats of wars arise from disputes, ensuring peace among nations. This innocent fallacy was fed by the more sophisticated fallacies of scholars who taught that, since all disputes were indeed capable of being solved by some legal answer, peace could be assured if Governments in dispute could be persuaded always to resort to the Court instead of resorting to force.

The extraordinary thing about this attitude of idealizing and at the same time harmfully isolating the role of the World Court is that none of those commentators would for a moment have expected any domestic court within a State to be able of itself to create order in society by the rule of law when isolated from other organs of government such as an executive or legislative branch. For even in a developed society working within the legal system of a State, it may be found wiser and even compelling on occasion, to change anachronistic or outdated law rather than seek to enforce it through the courts. There are, therefore, some situations and even some disputes between Governments which require a political decision by a political body rather than a decision by a court on the basis of existing law. It is a source of constant wonder that so many good people in the past could so long have supposed that an international court with compulsory jurisdiction was really

(Sir Robert Jennings, President, International Court of Justice)

possible without complementary and developed competences vested in other kinds of international governmental bodies.

Fortunately, developments within the United Nations itself have now overtaken this fallacy. Now the General Assembly, working mainly through the International Law Commission and the Sixth Committee but also through other organs, engages actively and continuously not only in the codification of existing international law but also in its progressive development. And the preventive diplomacy of the Secretary-General, the Security Council and indeed the General Assembly is providing the International Court of Justice with that political context in which it should now be able to perform its proper legal function.

(Sir Robert Jennings, President, International Court of Justice)

But let us be clear that adjudication of disputes is a process that has certain quite particular characteristics, the nature of which it is important to appreciate if we are to see the proper place of adjudication in the general scheme of the United Nations.

The International Court of Justice, like any court of law set up to adjudicate a dispute, operates by requiring the parties, by a process of written and oral pleadings, to reduce or refine their dispute into a series of specific issues of law or fact, or both law and fact, on which the parties take different views, and upon which accordingly the Court can decide by saying yea or nay, with the decision supported by legal reasoning. This process is easily recognizable by consulting the so-called submissions of the parties in any case and the operative part of a Judgment. In this process of the identification of the essential juridical and factual issues, the dispute is, as it were, refined, reduced and processed so as to make it suitable for judicial settlement, to make it in fact a justiciable dispute.

The issues thus identified and abstracted are decided by the Court by considering them in the light of the applicable law, which is public international law. International law is nowadays a much more elaborated, developed and complete system of law than many people realize, thanks partly to the jurisprudence resulting from the decisions of the International Court of Justice and other legal tribunals, and thanks also to the very important work of the International Law Commission and the Sixth Committee of the General Assembly.

On the other hand, although the process of adjudication means the reduction of a dispute to specific issues of law and fact, it is also necessary to appreciate that there is also in every dispute a more or less

(Sir Robert Jennings, President, International Court of Justice)

important political content. Every decision of a court has political consequences, as well as legal ones. The former tendency of commentators to distinguish between legal and political disputes, as if they fell into quite distinct categories, had a dangerous artificiality. A court must indeed apply legal rules and be seen clearly to be doing so, for otherwise it forfeits such authority as it has, for its authority arises not from the pronouncements of judges but from pronouncements of what the law is. Nevertheless, a good and useful court will not be ignorant of the political issues involved or of the political consequences of the decision it takes.

The important distinction, therefore, is not between legal and political disputes so much as between legal and political methods of dealing with disputes and indeed also with situations. One does not go to a court with matters in which a political rather than a legal decision is required; to do that there are other bodies, not least the principal political organs of the United Nations itself.

Nevertheless, there are many situations and disputes even of a highly political kind in which both kinds of process - adjudication and political and diplomatic adjustment - can make a contribution. I can best say what I mean by referring here to the report of the Secretary-General to the General Assembly, where it is said:

> "Another deficiency in the working of the system of collective security is the insufficient use of the principal judicial organ of the United Nations, the International Court of Justice. Many international disputes are justiciable; even those which seem entirely political (as the Iraq-Kuwait dispute prior to invasion) have a clearly legal component. If, for any reason, the parties fail to refer the matter to

(Sir Robert Jennings, President, International Court of Justice)

the Court, the process of achieving a fair and objectively commendable settlement and thus defusing an international crisis situation would be facilitated by obtaining the Court's advisory opinion." (A/46/1, p. 8)

I want to emphasize this idea of identifying the "legal component" or components of a larger and perhaps, looked at as a whole, predominantly political dispute or situation. This is where the Court's advisory jurisdiction, whereby it can give a non-binding opinion on the proper law applicable to a legal component of a dispute, could be immensely useful. It may sometimes offer a way of getting things moving. In any case, the clarification of the legal position of a mainly legal component can surely be very helpful. I am not suggesting it would invariably be wise or useful so seek an advisory opinion; that is a matter of juridical and political judgment. But I do believe that to have this option more constantly in mind would have great advantages for the whole process of preventive diplomacy. It is perhaps unfortunate that a superficial reading of Article 33 of the United Nations Charter, which lists all the possible ways for the pacific settlement of disputes, may give the impression that Parties have simply to choose a method from the list, including the possibility of adjudication. In fact, I believe that the Court can usefully play a role, even in highly political matters, complementary to the other methods in that list.

To have the principal judicial organ of the United Nations more often employed with respect to the legal components of situations with which the United Nations is concerned would, quite apart from its possible contribution to solving a dispute or situation, also do immense good for international law. The relevance of international law would thus be brought home to people

(Sir Robert Jennings, President, International Court of Justice)

generally. Such a development must be good not only for the Court but also for the United Nations and for the authority and awareness of international law itself.

In short, I see the future of the International Court of Justice as becoming much more clearly seen as the principal judicial organ of the United Nations and much more intimately concerned with what is happening here at United Nations Headquarters in New York. I want to see the judicial organ and the political organs of the United Nations both working in harness much more than hitherto. This, I must make very clear, is not at all to suggest that I want the Court itself to become more political. On the contrary, its mission is to declare and apply the law, and it will range outside that task at its peril and at the peril of international law. Rather, the aim I have in view is that the Court and the law it applies should be seen much more readily and commonly to be relevant to most disputed situations if only to a legal component of those situations. and that it should be much more readily seen that the Court itself could be used for its proper legal purpose by the Security Council and the General Assembly, and by other bodies entitled to employ the Court's advisory jurisdiction, in matters that are not essentially legal in the overall view but perhaps highly political.

(Sir Robert Jennings, President, International Court of Justice)

The Court has demonstrated that, where an advisory opinion is wanted urgently, it is able to give an answer remarkably quickly. The Court, in the case of the Palestine Liberation Organization Office in New York, where the General Assembly asked for an advisory opinion on 2 March 1988, was able, after full oral proceedings, to give its opinion in the following month of April. So, where rapidity is thought necessary and wise, we think we can provide it.

Let me emphasize now most strongly that what I am trying to suggest is not what one used to hear about discovering various ways of finding work for the Court to do. There is now no need for that. The Court is busy with important cases and indeed its meagre resources of personnel and premises are already dangerously stretched. It is, rather, a proposal that resort to the Court should be seen, not as a process over there in The Hague which can occasionally be appropriate and useful, but as an integral part of the work of preventive diplomacy in the United Nations here in New York. Such a development must help during this United Nations Decade of International Law to make people generally much more aware that international law is a complete system and that it should be and is regularly applied by the United Nations itself.

Let me now finally turn to an aspect of the Court's competence that stems not only from its own Statute but also from its being the principal judicial organ of the Organization. I refer to the fact that there is no element of the system of international law that is not within the Court's jurisdication to interpret and apply when it is called upon to do so.

The perceived needs of a particular time will dictate emphasis on certain aspects or topics of international law. The needs of our time have meant

(Sir Robert Jennings, President, International Court of Justice)

rightly that energy, time, passion and politics are concentrated on such matters as the environment, conservation and distribution of resources, human rights and other topically important parts of international law. It is crucial, however, never for a moment to lose sight of the fact that all these parts of international law depend ultimately on the health and strength of the system of international law as a whole. A right - even human rights - does not amount to much in practice unless it is established and seen to be established as an integral part of the whole system of international law which alone can create effective corresponding obligations in the international community. Some of those special causes are no doubt very important, but the most important special cause of all is international law itself and as a whole.

The International Court or Justice, as the principal judicial organ of the United Nations, is the organ which supremely represents and enshrines this universal system of now well-developed and working law. The Court's jurisdiction is in no way limited as to subject-matter. The environment, conservation, human rights, the law of the sea and the rest are without exception within the ambit of the Court's jurisdiction, and the range of topics involved in our present list of cases illustrates the wide spread.

There is of course room for some more specialized or regional tribunals. But let it not be forgotten that, exactly as in domestic court hierarchies, the principal judicial organ has jurisdiction in all matters; for in the end, the fabric of an effective law must be seen to be one and undivided, and universal in its application.

I am most grateful to have been given this opportunity to report on the state of the International Court of Justice and to make some suggestions about the direction of its future development. In closing, may I just express the

(Sir Robert Jennings, President, International Court of Justice)

warm gratitude of all members of the International Court of Justice for the splendid support the Court is now receiving from the General Assembly and its Committees in the form of advice, encouragement and material resources. All that, I can assure the Assembly, is very much appreciated by all members of the Court.

The PRESIDENT (interpretation from Arabic): I now call on the Secretary-General of the United Nations, Mr. Javier Perez de Cuellar.

The SECRETARY-GENERAL: The discussion of the report of the International Court of Justice gives me a welcome opportunity to make some observations on the interplay of the principal organs of the United Nations in the field of peaceful settlement of international disputes. It also affords me an occasion to review certain measures that might lead to the strengthening of the complementarity of the respective roles of the principal organs in this important field. It gives me particular pleasure to make these remarks in the General Assembly in the presence of the President of the International Court of Justice.

The International Court of Justice is one of the six principal organs of the United Nations and forms an integral part thereof. The organic links with the other principal organs of the United Nations are maintained through, inter alia, the annual report on the work of the Court and elections of members of the Court by the General Assembly and the Security Council acting independently but in concert, a unique procedure which underlines the active role of the two main principal organs in deciding the composition of the Court.

That the Court is also the principal judicial organ provides a further bond in the relationship. The General Assembly, the Security Council or other

(The Secretary-General)

organs of the United Nations and specialized agencies so authorized, may request the Court to give an advisory opinion on any legal questions arising within the scope of their activities. In this way, the Court assists the functioning of the Organization and of the system as a whole. Although few in number, the advisory opinions of the Court have been extremely important in the constitutional life of the Organization.

For the purpose of maintaining international peace and security and of promoting the peaceful settlement of disputes, the Charter prescribes complementary roles for the General Assembly, the Security Council, the Court and the Secretariat. The primary responsibility for the maintenance of international peace and security is assigned to the Security Council. It has full executive authority ranging from the competence to investigate disputes and to recommend methods of adjustment or terms of settlement to the power of determining the existence of a threat to the peace and deciding on enforcement measures.

The General Assembly has broad functions in regard to any matter within the scope of the Charter to consider and make recommendations on the principles of cooperation in securing world peace, and has the overarching competence to discuss and, under certain circumstances, make recommendations on questions relating to the maintenance of international peace and security.

As for the Court, the Charter provides that legal disputes should as a general rule be referred by the parties to the International Court of Justice. Thus, the Court, in addition to being the principal judicial organ of the institution itself, is also the principal arm for resolving legal disputes between States. Member States are ipso facto parties to the Court's Statute. Under specific conditions, a State which is not a Member of the United Nations may also have access to the Court.

(The Secretary-General)

Here, the function of the Court is to decide, in accordance with international law, disputes of a legal nature submitted to it by States. The Court helps therefore to achieve the objective of bringing about adjustment or settlement of disputes by "peaceful means and in conformity with the principles of justice and international law".

Pursuant to the Charter, each Member State undertakes to comply with the decision of the Court in any case to which it is a party. Recourse may also be made to the Security Council with a view to giving effect to the judgment. In deciding disputes between States and through its judgments, which represent the most authoritative pronouncements on international law, the Court contributes to the maintenance of international peace and security. The record shows that a high percentage of disputes brought to the Court have been satisfactorily resolved. Let me just mention in this regard the North Sea Continental Shelf cases of 1969, the Gulf of Maine Case of 1984 and the Frontier Dispute case of 1986.

The Secretariat, which is another principal organ, executes decisions and facilitates their implementation for the reduction of international tension and abatement of conflicts. To that end, the Secretariat has indeed provided a wide range of services to the parties in conflicts occurring in different parts of the world. To open channels of communication, to establish facts, to supply professional knowledge or expertise, and to develop draft texts are typical examples of such services - all of which have proved very valuable to the parties in search of a solution to the conflict. Here the activities of the Secretariat complement those of the other principal organs for securing international peace.

(The Secretary-General)

Article 99 of the Charter specifically authorizes the Secretary-General to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. The intention of the Charter framers was to facilitate the Security Council's tasks under the Charter. This authorization also provides an important legal basis for the Secretary-General to initiate actions for peace-keeping and peace-making. All these are meant to complement and strengthen the functions and powers of the Security Council for the peaceful settlement of disputes.

Clearly, each of these principal organs is endowed with a distinct role in the maintenance of international peace and security. But these roles are complementary. The independence of Namibia, which was achieved through the engagement of the General Assembly and the Security Council, the use of the Court's advisory jurisdiction, and the effective implementation of policy decisions by the Secretariat, best illustrates such complementary roles performed by the principal organs in bringing about peaceful solutions to international conflicts.

The complementarity in roles of the Court and the Security Council should be better understood and can be further strengthened in the field of settlement of disputes. Even international disputes which are predominantly political in nature often have a legal component. Dispute management can be greatly facilitated if legal components are separated from political issues. Different treatments can thus be applied. A reference to the International Court of Justice of even one legal aspect can produce valuable building blocks which may be useful for packaging the final political solution to the conflict.

(The Secretary-General)

This in no way detracts from the respective functions either of the Council or of the Court. On the contrary, it points to the utility of greater cooperation.

To undertake contentious proceedings before the International Court of Justice, which are by definition adversarial, may not be feasible or even desirable in certain situations. Advisory opinions, however, may offer a viable alternative, since they are given to a third party - that is, the requesting organ - not to the parties themselves. This reduces publicity and insulates the parties from direct confrontation. Moreover, the opinion being advisory and not binding makes it easier for the parties to agree to this approach. Suffice it to mention here that the Court's advisory opinions regarding reservations to the 1948 Genocide Convention, its advisory opinion on Namibia in 1971 and the 1975 opinion on the question of Western Sahara have all assisted the political organs of the United Nations on the settlement of disputes, facilitating an international solution to long-standing problems.

Both the Security Council and the General Assembly have the right to request advisory opinions from the Court, a right which could be exercised with greater frequency. But circumstances may require or the parties may prefer a quiet and discreet procedure which would not involve going through the decision-making process involving the entire General Assembly or the Security Council. This may particularly be the case in instances in which the Secretary-General is entrusted with the exercise of good offices as mediator of a dispute. Therefore, I have on a number of occasions suggested that the General Assembly should consider the possibility of authorizing the

(The Secretary-General)

Secretary-General to request, with the consent of the parties to the dispute, advisory opinions from the Court. The request would come from the Secretary-General and the opinion given by the Court would be for his use. The political contents of the case would be de-emphasized and the parties would be able to detach themselves from the request and from the proceedings. This would leave the Secretary-General the flexibility to find the best way to use the advisory opinion in the search for a solution to the dispute.

Before closing, I should like to turn to the topic of furnishing legal and financial assistance to States wishing to settle their disputes. Such assistance represents, in my view, another example of complementary activities of the principal organs for the purpose of promoting peaceful settlement of disputes.

Legal disputes exist in various parts of the world. The high costs incurred in proceedings often constitute a financial obstacle to seeking a judicial settlement through the Court, even though such a pacific settlement of disputes is in accorddance with Article 33, paragraph 1 of the Charter. This financial constraint is particularly apparent in developing countries where multiple needs compete for very limited funds. There are instances where the parties are prepared to resort to judicial settlement but are in need of funds or legal expertise or both. There have also been cases where the parties were willing but unable, for financial reasons, to implement an International Court of Justice judgment. The availability of external resources in such situations can therefore be extremely helpful to States in their search for peaceful solutions through the International Court of Justice for the settlement of disputes.

(The Secretary-General)

With this in mind, I established a Trust Fund in 1989 to offer limited financial assistance to States to defray their expenditures incurred in court proceedings. My objectives are to encourage States to make better use of the International Court of Justice and also actively to foster the peaceful settlement of disputes.

The Fund has received world-wide support and some 30 States from all regions of the world have made financial contributions. The Fund received its first application earlier this year and an award was subsequently made to a developing country which is seeking a solution to a dispute with a neighbour through the International Court of Justice. A second application is now pending. The present assets of the Fund are, however, very limited. I draw the Assembly's attention to this because I firmly believe that the Trust Fund provides a practical way of assisting States in their endeavours to reach a peaceful solution to their disputes.

Recent events underline that the Organization is capable of being an effective institution not only for the maintenance of international peace and security but also for the making of peace in different parts of the world. Principal organs, including the International Court of Justice, have important and distinct roles to perform in this area. It is through their complementary efforts that the potential of the United Nations will best be used. Member States should realize this and act accordingly.

Mr. MONTAÑO (Mexico) (interpretation from Spanish): At its forty-sixth session, the General Assembly had the opportunity of hearing the comments in the Sixth Commitee of Sir Robert Jennings, President of the International Court of Justice, on the Court's growing activity, a trend which, we are pleased to see, is gaining strength, as is apparent from the lucid statement made this morning by the President of the Court.

The dynamic changes taking place in international society have led to broad discussion of the place the United Nations should occupy in the system of relations that can already be glimpsed, as well as of reforms that might lead to the strengthening of that role. The International Court of Justice, as a principal organ, must also be included in this exercise.

Respect for international law has been and will remain a priority for Mexico and the Latin American countries, as their Heads of State and Government indicated in the Guadalajara Declaration of last July, in which they stressed their commitment to strengthening international law as a priority objective to be attained in the current atmosphere of world détente.

Chapter II of the report, concerning the Court's jurisdiction, both in contentious cases and in advisory proceedings, prompts members to give some thought to these matters for several reasons. The figure of 159 States given as parties to its Statute has increased with the admission of new Members to the Organization, which has implications for the Court's future work. Moreover, the report indicates that as at July 1991, 53 States had made declarations recognizing the Court's jurisdiction as compulsory. As early as October 1947, the Government of Mexico, consistent with its foreign policy, formulated its declaration in that regard. In the interest of widening the scope of the Court's jurisdiction, Mexico would welcome initiatives in this

(Mr. Montaño, Mexico)

direction that States that have already made declarations may wish to take, inasmuch as we are aware that the judicial remedy is one among other important forms of recourse for the peaceful settlement of disputes.

In his annual report this year, the Secretary-General once again emphasizes, with the force derived from the experience of events in the past year, an important suggestion with respect to preventive diplomacy, which is reproduced in Chapter II of the Court's report. In it, the Secretary-General - in our view quite rightly - again puts forward for the consideration of the General Assembly, as he has done verbally, the desirability of extending to him the authority to request advisory opinions from the International Court of Justice whenever such opinions would facilitate the process of achieving an objectively just and fitting solution, thus ultimately strengthening the means of defusing possible international crises.

The Mexican delegation wishes to reiterate its strong support for that idea, which would be extremely beneficial to the cause of preventing and resolving international conflicts. Moreover, we wish to draw attention to the favourable attitude towards this suggestion taken by a growing number of States in the course of the debates in the Sixth Committee. The additional information, both legal and political, so clearly provided by the Secretary-General in his statement, prompts the Assembly to act expeditiously.

Mexico deems the Secretary-General's proposal to be consistent with the environment of worldwide change that is inspiring the international community and is gradually leading to a strengthened United Nations role within a pluralistic and democratic framework, in which all States are participating, based essentially on international law and cooperation for development.

(Mr. Montaño, Mexico)

While the broadening of the advisory functions of the International Court of Justice does indeed reflect a current interest, it is not merely a response to a current attitude. Rather, it is backed by years of careful reflection. Now that appropriate conditions exist, we believe this is the time to take measures leading to that objective. The framework for considering the modalities of that decision might well be the present session of the General Assembly or the next session of the Special Committee on the Charter.

Chapter III of the report bears witness to the growing resort to the International Court of Justice in contentious cases. The law of the sea is the main issue in a number of the 11 cases before the Court.

Chapter IV refers to the valuable contribution the Court has made, at the Secretary-General's request, for the celebration of the United Nations Decade of International Law. In this regard, because it is intimately linked to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, mention should be made of the Court's enthusiastic attitude, as expressed on previous occasions, towards the publication of its Judgments in all the official languages of the United Nations, which, unfortunately, has not been possible as yet, because of budgetary limitations.

Mexico, nevertheless, welcomes the news that it will be possible to translate and publish in all the official languages the summary records of the Court's Judgments and advisory opinions, as a result of which the Court has offered to provide for publication a set of all such summaries dating back to 1949. The availability of this documentation will certainly promote the greater knowledge and dissemination of international law.

(Mr. Montaño, Mexico)

Lastly, my delegation wishes to place on record its appreciation of, and support for the Secretary-General's initiative regarding the trust fund for assistance to States in the settlement of disputes through the Court. This initiative has the merit, inter alia, of reducing economic imbalances between States and of creating a degree of equality among them with regard to the possibility of access to the Court's support services.

Mr. YAÑEZ BARNUEVO (Spain) (interpretation from Spanish): First of all, I would like to thank the Secretary-General and Sir Robert Jennings, the President of the International Court of Justice, for their very interesting words. From them and from the report of the Court on its activities from 1 August 1990 to 31 July 1991, which has been circulated to us, we can see that the situation of the Court is highly encouraging, with an increasing number of cases being submitted to it, irrefutable evidence of the growing confidence of states in this high institution. This situation is a cause of particular satisfaction to my country which fervently believes in the need to settle disputes between states by peaceful means, using all the procedures provided for the purpose by the United Nations Charter and other international instruments.

In these new and very encouraging times in international relations it is, as has just been recalled by the representative of Mexico and was stressed at the recent summit of Ibero-American heads of state and government held in Guadalajara, particularly necessary for international society to be based on respect for the rule of law and therefore, as provided in Article 1 of the Charter, disputes between states should be settled in conformity with the principles of justice and international law. One important means to that end is through recourse to the International Court of Justice, the principal judicial organ of the United Nations.

Use of the Court presupposes the existence of two conditions: political will and the finanical means of doing so. Political will is particularly expressed in the acceptance of the jurisdiction of the Court, which may be a general acceptance or on a case-by-case basis. In this regard, may I point out, as indicated in paragraph 14 of the Court's report, that Spain has

(Mr. Yañez Barnuevo, Spain)

accepted this compulsory jurisdiction when it deposited, on 29 October 1990, its optional declaration as provided for in Article 36 of the Statute of the Court. But, in addition to the political will, there must be the economic resources for embarking on proceedings which in most cases are lengthy and costly. Two years ago, the Secetary-General had the excellent idea of establishing a trust fund as a means of assisting less developed states in this regard. Today we can note with satisfaction that the fund has begun to work and I am pleased to say that my country has just made a contribution to it.

I said before that the situation of the International Court is encouraging, but in the pursuit of such an ambitious goal as respect for justice and intenational law in international relations, it is also true that we must never become complacent. We must therefore exert constant efforts towards that goal. We believe that the words we have just heard both from the President of the Court and from the Secretary-General show us the road that we might follow.

The Secretary-General, continuing his thinking in this area, has presented to us in his last two annual reports and in his statement this morning a specific suggestion aimed at refining the existing system on the basis of the Charter. He requests that the General Assembly authorize him, as provided for under Article 96 of the Charter, to request advisory opinions of the Court on legal questions arising within the scope of his activities. In our view, we should give serious consideration to the possibilities of acceding to that request and finding the right ways and means of doing so. The text of Article 96 of the Charter provides ample scope for finding a generally acceptable solution that would enable the Secretary-General to use

(Mr. Yañez Barnuevo, Spain)

the experience and authority of the Court when, in the exercise of his duties, legal questions may arise which require clarification at the highest possible level. We are convinced that we would thereby be serving the ultimate goal of the Organization, which is none other than the maintenance of international peace and security under conditions that may serve the aim of justice and progress for mankind.

Mr. KOROMA (Sierra Leone): The Sierra Leone delegation would like to join in welcoming Sir Robert Jennings, the President of the International Court of Justice, to this fourty-sixth session of the United Nations General Assembly, and to express our gratitude and appreciation to him for his illuminating statement on the ongoing activities of the International Court of Justice and its role in the peaceful settlement of disputes. My delegation would also like to convey through the President to his brother judges its warm felicitations for the outstanding role the Court has continued to play through its judgments, advisory opinions, interim measures and jurisprudence in fulfilment of the objectives and functions of the United Nations and its Charter, in particular in the maintenance of international peace and security.

Much as we all welcome the lessening of tension in international relations it is axiomatic that if the much heralded new world order is to be durable and equitable, it must be predicated on the solid foundation of the rule of law and indeed of international law. In this connection, the International Court of Justice will have to play the role that it has played so eminently in the past, upholding the principles of the Charter in terms of the non-use of force in international relations and in terms of the peaceful

(Mr. Koroma, Sierra Leone)

settlement of disputes. That the International Court of Justice has lately been performing its role as the principal judicial organ of the international community and hence increasingly won the confidence and admiration of the world community, is evidenced by its present list of cases and the increasing willingness of Member States to refer their disputes to the Court. Also in this connection, the delegation of Sierra Leone concurs with the position of the Secretary-General when he states in his report on the work of the Organization that

> "The rule of law in international affairs should .... be promoted by a greater recourse to the International Court of Justice not only in adjudicating disputes of a legal nature but also in rendering advisory opinion in the legal aspects of a dispute". (A/45/1, chap. III, p. 15)

The call by the Secretary-General that this authority be extended to him, with the consent of parties to a dispute, to facilitate the peaceful resolution of conflicts, therefore meets with the approval of my delegation.

(Mr. Koroma, Sierra Leone)

My delegation also welcomes the establishment of the trust fund for assistance to States that are disposed to refer their disputes to the Court but that lack the means, financial and human, to do so. However, my delegation would like to enter a caveat: we propose that, in the exercise of this function, advantage should be taken of the personnel available in the developing countries. This will not only promote the universality of the Court, but will also enable the requisite experience to be gained by personnel from the developing countries.

Given the new climate which exists in international relations today, Member States that have not yet accepted the optional clause of the Statute of the International Court of Justice - Article 36, paragraph 2, to which the President of the Court alluded in his statement - should seriously consider doing so, thereby increasing recourse to the Court in cases of dispute, which allows for judicial settlement, and hence strengthening international relations. We have taken note of the information provided by the President of the Court that Member States have indeed taken action in that connection - that is, in increasingly accepting the optional clause of the Statute of the Court.

The Sierra Leone delegation would like once again to proffer its thanks to the President of the International Court of Justice for taking the time to be present among us this morning.

The PRESIDENT (interpretation from Arabic): We have thus concluded our consideration of agenda item 13.

PROGRAMME OF WORK

The PRESIDENT (interpretation from Arabic): The General Assembly had been scheduled to consider agenda item 30, "Cooperation between the United Nations and the Organization of African Unity", this morning. However, at the request of a number of delegations, consideration of this item is postponed to a later date, to be announced.

I should like to inform members that on Wednesday, 13 November, in the morning, the Assembly will take up agenda item 39, "Question of the Falkland Islands (Malvinas)", and agenda item 14, "Report of the International Atomic Energy Agency", as well as agenda items 18 (h), "Appointment of the members of the Consultative Committee of the United Nations Development Fund for Women", and 18 (i), "Appointment of members of the Committee on Conferences".

In the afternoon of the same day, the Assembly will consider agenda item 142, "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba".

Agenda item 18 (g), "Appointment of members of the Joint Inspection Unit", which had been scheduled for consideration on Wednesday, 13 November, will be taken up on Wednesday, 20 November, in the morning.

The meeting rose at 11.25 a.m.

UNITED NATIONS

A

General Assembly

PROVISIONAL

A/46/PV.45
19 November 1991

ENGLISH

Forty-sixth session

GENERAL ASSEMBLY

PROVISIONAL VERBATIM RECORD OF THE 45th MEETING

Held at Headquarters, New York,
on Wednesday, 13 November 1991, at 10 a.m.

President: Mr. SHIHABI (Saudi Arabia)

- Scale of assessments for the apportionment of the expenses of the United Nations [114] (continued)
- Question of the Falkland Islands (Malvinas): Letter from Argentina and the United Kingdom of Great Britain and Northern Ireland [39]
- Report of the International Atomic Energy Agency [14] (continued)

  (a) Note by the Secretary-General transmitting the report of the Agency

  (b) Draft resolution

  (c) Amendment

/...

This record contains the original text of speeches delivered in English and interpretations of speeches in the other languages. The final text will be printed in the Official Records of the General Assembly.

Corrections should be submitted to original speeches only. They should be sent under the signature of a member of the delegation concerned, within one week, to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

91-61749 7341V (E)

- Appointments to fill vacancies in subsidiary organs and other appointments [18]

  (h) Appointment of the members of the Consultative Committee of the United Nations Development Fund for Women

  (i) Appointment of members of the Committee on Conferences: Note by the Secretary-General

The meeting was called to order at 10.15 a.m.

AGENDA ITEM 114 (continued)

SCALE OF ASSESSMENTS FOR THE APPORTIONMENT OF THE EXPENSES OF THE UNITED NATIONS (A/46/474/Add.4)

The PRESIDENT (interpretation from Arabic): I should like to draw the Assembly's attention to document A/46/474/Add.4, which contains a letter addressed to me by the Secretary-General informing me that, since the issuance of his communications dated 17 September, 8 and 10 October and 5 November 1991, the Dominican Republic has made the necessary payment to reduce its arrears below the amount specified in Article 19 of the Charter.

May I take it that the General Assembly duly takes note of this information?

It was so decided.

AGENDA ITEM 39

QUESTION OF THE FALKLAND ISLANDS (MALVINAS): LETTER FROM ARGENTINA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (A/46/596)

The PRESIDENT (interpretation from Arabic): In connection with this item, I should like to call the attention of the Assembly to document A/46/596 containing a joint statement issued in London and Buenos Aires on 25 September 1991 by the Governments of the United Kingdom of Great Britain and Northern Ireland and the Argentine Republic.

Furthermore, and taking into account General Assembly decision 45/424 of 12 December 1990, I should like to inform representatives that, following consultations regarding agenda item 39 on the question of the Falkland Islands (Malvinas), it is proposed that the General Assembly decide to postpone consideration of this item and to include it in the provisional agenda of its forty-seventh session.

(The President)

May I take it, therefore, that the Assembly, taking into account its decision 45/424, wishes to take note of document A/46/596, already referred to, and that it is also the wish of the Assembly to defer consideration of this item and to include it in the provisional agenda of the forty-seventh session?

It was so decided.

The PRESIDENT (interpretation from Arabic): We have thus concluded consideration of agenda item 39.

AGENDA ITEM 14 (continued)

REPORT OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

(a) NOTE BY THE SECRETARY-GENERAL TRANSMITTING THE REPORT OF THE AGENCY (A/46/353)

(b) DRAFT RESOLUTION (A/46/L.10 and Corr.1)

(c) AMENDMENT (A/46/L.12)

The PRESIDENT (interpretation from Arabic): May I remind representatives that the debate on this item was concluded at the 34th plenary meeting, held on Tuesday, 22 October.

In connection with this item the Assembly has before it a draft resolution issued as document A/46/L.10 and Corr.1 and an amendment submitted by the representative of Iraq in document A/46/L.12.

I call on the representative of Iraq, who wishes to introduce the amendment to draft resolution A/46/L.10.

Mr. MALIK (Iraq) (interpretation from Arabic): On behalf of the delegation of Iraq, I have the honour to introduce the amendment to draft resolution A/46/L.10 that has been circulated in document A/46/L.12. I should like to make it clear here that the proposed operative paragraph is an addition to the draft resolution contained in document A/46/L.10.

Before I proceed with my introduction, allow me to make the following remarks.

First, Iraq is very keenly interested in seeing that the work of the International Atomic Energy Agency (IAEA) or any other international agency of the United Nations system should not be politicized.

Secondly, the aim of some parties to politicize draft resolution A/46/L.10 is part of a series of efforts being made by them to show Iraq as contravening resolutions and conventions so that the inhuman blockade against the Iraqi people may continue. Members are undoubtedly familiar with the latest report, excerpts of which were published in The New York Times of 22 October 1991 concerning the death of Iraqi children under the age of five in Iraq and the destructive results of this inhuman blockade and the toll it has taken in Iraqi lives and the very structure of Iraqi society. I quote from this report as cited in The New York Times:

(spoke in English)

> "'The safe disposal of Iraq's weapons of mass destruction, demanded by ... resolution [687 (1991)], is a particularly legitimate concern. But it ... unleashed the destructive power of another weapon of mass destruction - the effective withdrawal of food and other necessities from the Iraqi people'." (The New York Times, 22 October 1991, p. A6)

(Mr. Malik, Iraq)

(spoke in Arabic)

Thirdly, we in Iraq are against double standards in dealing with States. If there is a single agreed standard, let it be applied to all States without distinction, especially in this vitally important field. The United States and its Western allies have raised the roof over the mere fact that Iraq has a technological and scientific research programme. These States claim that they are applying the Charter and international law. Why then do they not confront Israel, which actually does possess, and I repeat, does possess nuclear warheads aimed at the heads of all Arabs.

Israel has more than 300 nuclear warheads aimed at the heads of your Arab friends. Should you not voice your deep concern over this dangerous aberration, which threatens dire consequences at any moment? I advise members to take a look at the article published in The New York Times on 20 October 1991 to see but a part of the reality to which we had drawn attention in June 1981. The statement made by the Foreign Minister of Iraq at that time in a meeting held by the Security Council will make it clear that Iraq had mentioned this information in detail concerning Israel's project for the production of nuclear weapons to use against your Arab friends. Is this not a cause for deep and profound concern?

This is all that we are requesting in the paragraph contained in the amendment in document A/46/L.12, that is, to mention two facts: namely, that the General Assembly notes with appreciation a resolution of the International Atomic Energy Agency on Israeli nuclear capabilities and the threat they pose to the States of the region, and that deep concern is felt by all of us as a result of Israel's non-compliance with the Security Council resolution unanimously adopted on 19 June 1981 clearly calling on Israel to accede to the

(Mr. Malik, Iraq)

Treaty on the Non-Proliferation of Nuclear Weapons. This is all that we want to say in this paragraph. It is only right, fair and just.

The PRESIDENT (interpretation from Arabic): I call on the representative of Argentina, who wishes to speak on a point of order.

Mr. CHIARADIA (Argentina) (interpretation from Spanish): As is customary, the members of the Bureau of the Board of Governors of the International Atomic Energy Agency (IAEA) coordinate the submission of the draft resolution relating to that body's report to the General Assembly.

This year Argentina as Chairman and Australia and Bulgaria as Vice-Chairmen fulfilled this task. In carrying out this responsibility, we consulted with a large number of countries on how best to present the IAEA's report to the General Assembly at this session. During those consultations, we found that a large number of delegations felt that the wording of the draft resolution in document A/46/L.10 was suitable and satisfactory.

Consequently, reflecting the opinion of the members of the Bureau of the Board of Governors of IAEA and speaking on behalf of all the countries supporting the present text of draft resolution A/46/L.10 as a whole, we believe that amending that text would be inappropriate.

For those reasons, we propose, in conformity with rule 74 of the General Assembly's rules of procedure, that no action be taken on document A/46/L.12.

The PRESIDENT (interpretation from Arabic): The representative of Argentina has moved, within the terms of rule 74 of the rules of procedure, that no action be taken on the amendment circulated in document A/46/L.12. Rule 74 reads as follows:

(The President)

"During the discussion of any matter, a representative may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote ...".

I call on the represensentative of Iraq.

Mr. MALIK (Iraq) (interpretation from Arabic): The Iraqi delegation categorically rejects and firmly opposes the arbitrary proposal made by the representative of Argentina. The procedure adopted by the sponsors of draft resolution A/46/L.10 is not evidence of courage but of failure. It is obvious that they have resorted to this procedural ploy out of fear that the Iraqi amendment in document A/46/L.12 may be adopted.

The procedure is utterly undemocratic, although some of the sponsors raise the slogans of democracy and claim to defend it. Once again, the General Assembly can see very clearly how double standards are used in dealing with States and facts alike. This is yet another demonstration of the policy of muzzling certain parties and of dealing in a discriminatory and arbitrary manner with a fact that is known to all: that the international community condemns such a policy. This policy is intended to prevent members from making proposals and discussing them.

Where is the justice that has been lauded by these States? Where are the principles of the Charter, which protect everyone in this Hall? Where is the fairness of which some are so fond of paying lip service to?

The delegation of Iraq has submitted the amendment to draft resolution A/46/L.10 contained in A/46/L.12. As I said in my earlier statement, the amendment contains two facts which are known to all and which are acknowledged by the international community. In doing that, Iraq, like all other Member States, has exercised its right to voice a legitimate concern. And we are sure that many free States of the world share that concern.

But, like many others, we have noted that over the past two weeks the United States of America has brought pressure to bear on all Member States with a view to blocking the adoption of our amendment. It was ironical indeed that, wherever we contacted our Assembly colleagues to discuss the matter

(Mr. Malik, Iraq)

with them, we were told that the United States too had contacted them. No one said he had been contacted by Israel. The spoilt child of the United States did not even bother to contact anyone, since big brother did the job on its behalf.

The delegation of Iraq, in putting these facts before the Assembly, calls upon all States to support the cause of justice and thwart the proposed adjournment of the debate on amendment A/46/L.12. We call on members to vote against that proposal. History will record who upheld the principles of the Charter and who did otherwise.

The PRESIDENT (interpretation from Arabic): I shall now put to the vote the motion submitted by the representative of Argentina that no action be taken on the amendment circulated in document A/46/L.12. A recorded vote has been requested.

A recorded vote was taken.

In favour: Albania, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belarus, Belgium, Belize, Bolivia, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Fiji, Finland, France, Germany, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malawi, Marshall Islands, Mexico, Mongolia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Spain, Swaziland, Sweden, Thailand, Togo, Turkey, Ukraine, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zimbabwe

Against: Algeria, Bahrain, Burkina Faso, China, Comoros, Cuba, Djibouti, Egypt, Iran (Islamic Republic of), Iraq, Jordan, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mauritius, Morocco, Nigeria, Qatar, Saudi Arabia, Tunisia, Uganda, Vanuatu, Viet Nam, Yemen

Abstaining: Bangladesh, Bhutan, Botswana, Brunei Darussalam, Burundi, Chad, Côte d'Ivoire, Gabon, Gambia, Ghana, Haiti, India, Lao People's Democratic Republic, Lesotho, Liberia, Myanmar, Namibia, Oman, Pakistan, Sri Lanka, Sudan, Suriname, Trinidad and Tobago, United Arab Emirates, United Republic of Tanzania, Yugoslavia

The motion was adopted by 88 votes to 25, with 26 abstentions.*

The PRESIDENT (interpretation from Arabic): We shall now proceed to take action on draft resolution A/46/L.10 and Corr.1.

I shall call on representatives wishing to speak in explanation of vote before the voting. May I remind delegations that in accordance with General Assembly decision 34/401 explanations of vote are limited to 10 minutes and should be made by delegations from their seats.

---

* Subsequently the delegations of Hungary and Mauritius advised the Secretariat that they had intended to vote in favour; the delegations of Indonesia, the Syrian Arab Republic and the United Arab Emirates had intended to vote against; the delegation of Niger had intended to abstain.

Mr. AL-ALFI (Yemen) (interpretation from Arabic): Yemen values very highly the efforts of the International Atomic Energy Agency (IAEA) in carrying out its tasks in the Middle East region and in other parts of the world. Consistently, year after year, Yemen has supported the resolutions relating to the report of the International Atomic Energy Agency.

However, in the light of what has just taken place with regard to the procedural motion submitted to the Assembly, we must say that what has taken place betrays clearly a double standard in dealing with the Middle East region.

The justification given to us a few moments ago with regard to that procedural motion was that the draft resolution is an integrated whole and that anything else will damage the draft resolution.

May I refer to the last preambular paragraph which makes mention of certain resolutions adopted by the Agency concerning the Israeli nuclear capabilities and the Israeli nuclear threat. In the same paragraph, there is reference to another resolution on the application of the IAEA safeguards in the Middle East.

The annals of the United Nations are replete with the breaches by Israel of United Nations resolutions and Israel's non-compliance with the repeated calls to it by this international forum to accede to the safeguards regime of the IAEA. As a member of the Security Council, we note the draft resolution's reference to Security Council resolutions and find it strange indeed that reference to Security Council resolutions relating to Israel would damage the draft resolution. In view of this double standard, we no longer know which of the Security Council resolutions we should select and which we should reject. Is the Security Council made up of several parts? This is a question before the international community.

(Mr. Al-Alfi, Yemen)

Our concern and fear is that the procedural motion would mean, inter alia, giving Israel carte blanche to persist in its rejection of the international community's pleas and calls that it should accede to the safeguards regime of the IAEA.

In view of the reports which are no longer covered by secrecy and which have become common knowledge, we must draw attention to the fact that in the Middle East region Israel, in particular, possesses nuclear capabilities and nuclear weapons.

In view of all this, my delegation finds that it cannot support the draft resolution this year and, therefore, will abstain when it is put to the vote.

Mr. KORUTURK (Turkey): Turkey is against the proliferation of nuclear weapons. That is why we join in the consensus which exists in the General Assembly on the establishment of a nuclear-weapon-free zone in the Middle East. This position of my country was confirmed yesterday in the First Committee during the adoption, without a vote, of draft resolution A/C.1/46/L.35/Rev.1. Therefore, we have no objection to the substance of the amendment in document A/46/L.12.

Nevertheless, because we believe that the draft resolution in document A/46/L.10 on the report of the International Atomic Energy Agency is not the appropriate framework for addressing this issue, we voted in favour of the procedural motion for no action on this amendment.

The PRESIDENT (interpretation from Arabic): The General Assembly will now take a decision on draft resolution A/46/L.10/Corr.1. A separate vote has been requested on operative paragraph 4 of draft resolution A/46/L.10/Corr.1.

Is there any objection to that request?

(The President)

Since there is no objection, I shall therefore put operative paragraph 4 to the vote first.

A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Albania, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Greece, Grenada, Guatemala, Guinea, Guyana, Honduras, Iceland, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Lesotho, Liechtenstein, Lithuania, Luxembourg, Malawi, Maldives, Mali, Marshall Islands, Mongolia, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Seychelles, Sierra Leone, Singapore, Solomon Islands, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Thailand, Togo, Turkey, Ukraine, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela, Yugoslavia, Zimbabwe

Against: Cuba, Iraq

Abstaining: Benin, Democratic People's Republic of Korea, Ghana, Haiti, Lao People's Democratic Republic, Liberia, Malaysia, Mexico, Myanmar, Trinidad and Tobago, Uganda

Operative paragraph 4 of draft resolution A/46/L.10/Corr.1 was adopted by 122 votes to 2, with 11 abstentions.*

---

* Subsequently the delegations of Hungary, Indonesia, Latvia and Liberia advised the Secretariat that they had intended to vote in favour.

The PRESIDENT (interpretation from Arabic): I now put to the vote draft resolution A/46/L.10/Corr.1, as a whole.

A recorded vote has been requested.

A recorded vote was taken.

In favour: Afghanistan, Albania, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Iceland, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Singapore, Solomon Islands, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela, Viet Nam, Yugoslavia, Zimbabwe

Against: None

Abstaining: Algeria, Cuba, Ghana, Haiti, Iraq, Jordan, Malaysia, Sudan, Yemen

Draft resolution A/46/L.10/Corr.1, as a whole, was adopted by 141 votes to none, with 9 abstentions (resolution 46/16).*

---

* Subsequently the delegations of Hungary, Indonesia, Latvia and Nicaragua advised the Secretariat that they had intended to vote in favour.

The PRESIDENT (interpretation from Arabic): I shall now call on those representatives who wish to explain their votes. May I remind delegations that, in accordance with decision 34/401, explanations of vote or position are limited to 10 minutes and should be made by delegations from their seats.

Mr. MONTAÑO (Mexico) (interpretation from Spanish): The delegation of Mexico voted in favour of draft resolution A/46/L.10 because, as in past years, we are convinced of the importance of the work being carried out by the International Atomic Energy Agency (IAEA), as described in the report (A/46/353) before the General Assembly.

My delegation would have preferred to have the draft resolution remain within the bounds of the texts which have in the past won the unanimous support of the General Assembly. We are sure that a text in keeping with resolution 45/7, which was adopted last year, would have maintained the agreement among all delegations on the mandate and work of IAEA. In our opinion, the inclusion of operative paragraph 4 in the text put to the General Assembly this year brings in elements on which it could be difficult to achieve a consensus.

The delegation of Mexico has reservations about this paragraph, as it believes that it introduces political considerations into the work of a body which is eminently technical. Similarly, we were opposed to including additional elements in the draft resolution with political objectives, as these would have been likely to undermine the purpose of the resolution we have just adopted.

Also, it is clear that, regardless of the importance that the Agency's participation has had in the implementation of Security Council resolutions

(Mr. Montaño, Mexico)

687 (1991) and 707 (1991), the Agency has carried out other activities over the past few months which cannot and should not be sidelined. One cannot award the IAEA safeguards activities a privileged place in a resolution submitted to the General Assembly except at the expense of the importance attached to other activities, such as, for example, the Agency's technical cooperation. It is contrary to the provisions of resolution GC(XXXV)/RES/569 of the 35th General Conference of IAEA, which affirmed that in order for its objectives to be achieved, a suitable balance should be struck between the Agency's principal activities.

Furthermore, it is clear that the activities of IAEA which relate to Iraq derive from specific Security Council mandates and, therefore, are exceptional in nature. The Agency must hold to its unaltered and unalterable character as a technical body by avoiding politicization and not extrapolating extraordinary cases into guidelines for the future.

Mr. TRINH XUAN LANG (Viet Nam): The delegation of Viet Nam has asked to speak in order to explain, briefly, the positions that it adopted in the voting process related to the report of the International Atomic Energy Agency (IAEA).

On many other occasions at this rostrum or in IAEA forums, Viet Nam has expressed its high appreciation of, and support for, the important work of IAEA. As indicated in the annual report of IAEA for 1990 (A/46/353) and in the statement by Dr. Hans Blix, Director General of IAEA, the Agency has undertaken an immense amount of work and has taken on some tasks that are unprecedented in their scope and complexity.

(Mr. Trinh Xuan Lang, Viet Nam)

The work of IAEA is commendable, and Viet Nam is pleased to join other countries in endorsing the report of the Agency submitted to the General Assembly at its forty-sixth session, as reflected in the resolution just adopted.

The position that the delegation of Viet Nam adopted on the procedural vote relating to the amendment contained in document A/46/L.12 is fully in line with the objectives of the Agency, particularly that of promoting the peaceful uses of nuclear energy. Furthermore, that position is based on Security Council resolution 487 (1981) of 19 June 1981, numerous resolutions of the General Assembly, and on resolution GC(XXXV)/RES/570 of IAEA.

Mr. AWOONOR (Ghana): The draft resolution contained in document A/46/L.10, together with the amendment proposed in document A/46/L.12, sought to contribute to the achievement of an objective we all desire, namely, the eventual establishment of a nuclear-weapon-free zone in the Middle East. In the relevant resolution adopted last year - resolution 45/52 - the General Assembly urged that steps should be taken towards the establishment of such a zone and called upon all Middle East States that had not done so to submit to International Atomic Energy Agency (IAEA) safeguards.

Ghana strongly identified itself with forces that condemned Iraqi aggression against, and occupation of, Kuwait. It was absolutely unacceptable and morally wrong for Iraq to invade and occupy Kuwait. It is a matter of regret that our appeals for a peaceful solution of the underlying conflict did not reach receptive ears.

Ghana has also supported subsequent resolutions of the Organization, including resolution 687 (1991), adopted by the Security Council in order to

(Mr. Awoonor, Ghana)

permit an inventory of Iraq's chemical weapons, biological weapons and nuclear facilities, materials and stockpiles. Had the draft resolution contained in document A/46/L.10 come under an agenda item dealing directly with the Gulf crisis, and had it therefore made any reference to Iraq in that context, Ghana would have positively voted for it without hesitation, but the resolution comes under agenda item 14, which deals with the report of IAEA.

(Mr. Awoonor, Ghana)

The report deals with a number of issues, including resolution GC(XXXIV)/RES/526 of the IAEA General Conference, in which the Director General is requested

> "to deploy further efforts in continuing the consultation with the States concerned in the Middle East area with a view to applying Agency safeguards to all nuclear installations in the area".
>
> (IAEA Annual Report for 1990 (GC(XXXV)/953), p. 6)

Ghana therefore expected the Assembly to adopt a resolution that could add to the worthy efforts that have been launched in Madrid and would promote lasting peace in the Middle East, with particular reference to assignments given to IAEA. Regrettably, the resolution does not take into account these laudable goals and rather tends to be discriminatory in intent, but the United Nations cannot be a body that will lend itself to any effort which is not seen to be even-handed or fair. It is for these reasons that my delegation abstained in all phases of the decision-making on this resolution.

Mr. RIVERO ROSARIO (Cuba) (interpretation from Spanish): The delegation of Cuba would like to place on record its reservation with regard to operative paragraph 4 of draft resolution A/46/L.10, on the report of IAEA. That reservation was the reason for our abstention.

In the first place, I should like to mention the importance my country attaches to this body, which helps provide useful cooperation in our present programmes for the peaceful uses of nuclear energy with a view to the economic, social and scientific development of Cuba.

Since my delegation did not take part in the debate, may we briefly thank the Director General of IAEA for the report he has submitted, which provides

(Mr. Rivero Rosario, Cuba)

some information on Cuba's cooperation with IAEA, to which I have just referred.

In past years, the General Assembly resolution on the report of IAEA has been more or less procedural in nature, taking note of the report as a whole without giving special importance to any particular activities and avoiding controversial language that might prevent it from enjoying greater support from delegations. This is not surprising since the report deals with the work of a body that is so important to the international community that the adoption of its annual report to the General Assembly should command only the broadest possible support. Abandoning this beneficial approach could have a negative effect, and no one would want that. It might set a precedent which could undermine the achievement of consensus in other related areas.

My delegation is also concerned that in operative paragraph 4 one of the Agency's activities is singled out for praise, an activity that was carried out at the behest of another principal organ whose decisions are binding in nature, and do not require action by the General Assembly, the organ to which IAEA reports regularly within the context of the resolutions mentioned in the same paragraph and which keeps itself informed of the matter by virtue of those resolutions. Furthermore, as will be recalled, resolution 687 (1991) was not supported by all members of the Security Council, and my delegation, as a non-permanent member, voted against it for the reasons clearly explained on that occasion. We shall not repeat them here, but they had to do with its judgement that, through that resolution, the Security Council assumed powers which went beyond its terms of reference as laid down clearly in the United Nations Charter. This action, in our opinion, therefore violated the terms of the Charter. The reasons we expressed still have the same force and validity.

(Mr. Rivero Rosario, Cuba)

quite apart from any other considerations. For that reason it would be impossible for my delegation to support this paragraph of the resolution on the report of IAEA.

In addition, my delegation would like to state its view that the activities authorized by the Security Council on verification and inspection, including those related to the case of Iraq, should not become a precedent or be used as a pretext for strengthening some IAEA activities at the expense of the other tasks of extreme importance that are being carried out by the Agency for the benefit of the developing countries in the promotion of the peaceful uses of nuclear energy. And that includes technical assistance and cooperation.

The Cuban delegation is also concerned that by singling out in a General Assembly resolution this particular activity of IAEA that is being carried out in such exceptional circumstances, to which the Director General referred when he presented his report, we would unduly prejudge the activities that the organization should be carrying out in the future in the normal performance of its many functions, including activities to improve safeguards.

Although it is always right and necessary to refer to past experience in such delicate areas as the one considered here, which affects the interests of the entire international community, we should proceed with the utmost caution and with due respect for the sovereignty of States, without offering judgements but taking into account everyone's concerns. It would be harmful and against the general interest if this procedure were undermined or subverted.

Finally, my delegation would like to say that its position does not imply any commitment regarding those treaties or conventions mentioned in the draft

(Mr. Rivero Rosario, Cuba)

resolution that have not been signed by Cuba, specifically the Treaty on the Non-Proliferation of Nuclear Weapons and the Convention on the Physical Protection of Nuclear Material - nor any commitment, as we have indicated before, with regard to implementation of Security Council resolution 687 (1991) or how that resolution might apply to other cases.

Mr. JACOB (Israel): My delegation voted in favour of the draft resolution just adopted, but if the text had been put to the vote paragraph by paragraph we would have voted against the last paragraph of the preamble.

Mr. SALAH (Jordan) (interpretation from Arabic): My delegation abstained in the vote on draft resolution A/46/L.10 because we believe that there is a lack of balance between the concepts and issues in the preambular paragraphs and those which appear or those which do not appear in the operative paragraphs of the resolution.

(Mr. Salah, Jordan)

Specifically speaking, while the last preambular paragraph refers to various instances relating to the nuclear capabilities of certain countries, such as the nuclear capabilities of South Africa and Israel's nuclear capabilities and threat, as well as the application or non-application of the Agency's safeguards in the Middle East, in the operative paragraphs, there is no mention at all of South Africa or Israel, or of the fact that Israel is not committed to implement the safeguards regime of the International Atomic Energy Agency (IAEA), particularly in the case of the Dimona reactor.

That is why we find that the draft resolution had strayed from equity and justice in its judgements. For all those reasons, and because we believe that the adoption of resolutions in the General Assembly should proceed in a democratic fashion, my delegation voted against the procedural motion submitted by Argentina.

I should like to take this opportunity to express our appreciation of the IAEA and its Director General for their work. I would also like to emphasize the importance of their work in encouraging the use of atomic energy for peaceful purposes and their taking due account of the need of developing countries, in particular, to obtain technical assistance from the Agency.

My delegation would like to reaffirm the right of States to possess the necessary technology to provide for their own development. I would also like to assert that States - particularly those in the Middle East - should accede to the non-proliferation Treaty and apply the safeguards of the IAEA on all their nuclear installations.

Mr. MUMBENGEGWI (Zimbabwe): Zimbabwe has read with great care the report of the International Atomic Energy Agency (IAEA) contained in document A/46/353. We have also examined the resolution just adopted and its amendment in document A/46/L.12.

(Mr. Mumbengegwi, Zimbabwe)

As a member of the Security Council, Zimbabwe supported Security Council resolutions 687 (1991) and 707 (1991). Those resolutions entrusted the IAEA with certain tasks relating to the nuclear programme in Iraq. The Agency has discharged the tasks assigned to it by the Security Council.

It is therefore consistent that we should commend the Agency for carrying out those tasks. For that reason, we have supported the resolution just adopted without any amendments.

The PRESIDENT (interpretation from Arabic): The Assembly has thus concluded its consideration of agenda item 14.

AGENDA ITEM 18

APPOINTMENTS TO FILL VACANCIES IN SUBSIDIARY ORGANS AND OTHER APPOINTMENTS

(h) APPOINTMENT OF THE MEMBERS OF THE CONSULTATIVE COMMITTEE OF THE UNITED NATIONS DEVELOPMENT FUND FOR WOMEN

(i) APPOINTMENT OF MEMBERS OF THE COMMITTEE ON CONFERENCES: NOTE BY THE SECRETARY-GENERAL (A/46/109)

The PRESIDENT: Concerning sub-item (h) of agenda item 18, the terms of office of the present five members of the Consultative Committee appointed under General Assembly decisions 43/325 of 9 December 1988 and 45/318 of 12 December 1990 expire on 31 December 1991.

Following consultations, I have appointed Denmark and Uganda as members of the Consultative Committee for a three-year term beginning on 1 January 1992.

May I take it that the General Assembly takes note of these appointments?

It was so decided.

The PRESIDENT: Consultations for identifying candidates for appointment as members of the Committee are still in progress. Accordingly, I hereby renew my appeal to the regional groups to continue to extend their cooperation to me in this regard.

(The President)

We have concluded this stage of our consideration of agenda item 18 (h).

We turn now to sub-item (i) of agenda item 18, entitled "Appointment of members of the Committee on Conferences". As indicated in document A/46/109, the General Assembly, by its resolution 43/222 B of 21 December 1988, decided that the Committee on Conferences should be composed of 21 members to be appointed by the President of the Assembly, after consultations with the chairmen of the regional groups, for a period of three years, on the basis of geographical distribution. The Assembly further decided that each year one third of the Committee's membership should retire and that retiring members would be eligible for reappointment.

Since the terms of office of Ghana, Honduras, Hungary, Indonesia, Jamaica, Mozambique and the United Kingdom of Great Britain and Northern Ireland expire on 31 December 1991, it is necessary for the President of the General Assembly to appoint, during the current session, seven members to fill the resulting vacancies. The members so appointed will serve for a period of three years beginning on 1 January 1992.

After consultations with the chairmen of the groups of Asian States, Eastern European States, Latin American and Caribbean States and Western European and Other States, I have appointed Honduras, Hungary, the Islamic Republic of Iran, Jamaica and Turkey to be members of the Committee on Conferences, with effect from 1 January 1992.

May I take it that the Assembly takes note of these appointments?

It was so decided.

The PRESIDENT: Regarding the remaining two vacancies to be filled from the African States, I intend to hold further consultations with the

(The President)

chairman of the group in this respect. Therefore I propose that the Assembly should keep this sub-item on the agenda of the forty-sixth session. If I hear no objection, I shall take it that the Assembly agrees to that procedure.

It was so decided.

The PRESIDENT: We have concluded this stage of our consideration of agenda item 18 (i).

The meeting rose at 11.20 a.m.